LOS ANGELES BAR BULLETIN

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VOL. 27 JANUARY, 1952 No. 5

PRESIDENT'S PAGE

H. F. Selvin

THE work of the Los Angeles Bar Association is not and never has been carried on by only a few members. More than ever is this thought impressed upon me as the year-end reports of our many committees are reviewed. A very great deal of time and much conscientious and fruitful effort have gone into our activities as the result of the unselfish contributions of hundreds of people who have served as chairmen and members of those committees. To those members I must and do express not alone my personal appreciation but as well the thanks and gratitude of the Association at large. Without them the Association would have been one in name only.

To the members of the Board of Trustees our thanks are especially due. Their meetings have been numerous, their attendance has been exceptionally good; and the thought and patient consideration given to the various and diverse matters, upon which action was necessary, have been exemplary. Aided by our industrious and efficient permanent staff and with the always helpful guidance and counsel of Lou Elkins, the affairs of the Association have done well at their hands.

For the official year about to begin the harbingers of continued progress are good. Another able and distinguished board, presided over by Steve Fargo, will, I am sure, make it a year to rank with the finest the Association has had. Speaking to them on behalf of the membership, I extend our congratulations and our assurances of the utmost in support and cooperation.

HERMAN F. SELVIN.

THE BILL OF RIGHTS IN TIME OF CRISIS

By Judge Leon R. Yankwich*

Judge Yankwich*

"I *WILL now tell you what I do not like (in the Constitution). First, the omission of a bill of rights, providing clearly, and without the aid of sophism, for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land, and not by the laws of nations.*" (Thomas Jefferson to James Madison, Paris, December 20, 1787. From Thomas Jefferson, Life and Selected Writings (Modern Library Edition, 1944, 437).)

I.
AMERICANISM V. TOTALITARIANISM

Times of crisis bring to the fore in democratic countries the problem of reconciling freedom with security.

On July 4, 1861, in the early days of the Civil War, Lincoln addressed these words to the Congress:

> "Must a government, of necessity, be too strong for the liberties of its own people or too weak to maintain its own existence?"

Lincoln, a strong believer in democracy, posed the question honestly and sincerely.

Behind it lay the frontiers-man's belief in the individual and the determination of the nationalist to save the nation from destruction by schism. The problem is ever-recurring. And, with us, the question must be related not only to the promise of American life, but also to the guarantees of the Bill of Rights.

The philosophy behind the Bill of Rights asserts the supremacy of the individual not of the government. And it is the particular function of the Federal Judiciary to make the guarantees a reality for the individual who seeks its aid.

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*LEON R. YANKWICH, J.D., LL.D., *is Chief United States District Judge, Southern District of California, and author of* THE NATURE OF OUR FREEDOM *and* IT'S LIBEL OR CONTEMPT IF YOU PRINT IT.

A correct understanding of that function requires a contrast between this philosophy and the philosophy of totalitarianism,—Fascist, Falangist, Communist or Nazi. What most emphatically differentiates totalitarianism from our system is the fact expressed in a statement made by a Soviet writer that it is inconceivable "that man in society should have rights he can assert against the community." Andrei Y. Vishinsky, in his book on "The Law of the Soviet State," says, in effect, that there is no need for the assertion of individual rights, because the State represents the totality of the individual's rights. This is not a new doctrine. It is a doctrine abandoned on the field of Runnymede on June 15, 1215, when Magna Carta was promulgated. The meaning of Magna Carta in Anglo-American history is this: There was established the doctrine that there are vested in each individual certain rights that he can assert against the sovereign himself.

The Bill of Rights carried into American federal law what the Colonists, as individuals and as subjects of England, had asserted to be a part of their fundamental rights. If we study the discussions about the omission of the Bill of Rights,—an omission which nearly cost the adoption of the Constitution,—we find that Patrick Henry, great patriot that he was, opposed the adoption of the Constitution in language which, if used today, would make him very "suspect" in some quarters.

The basis for the opposition of men like Hamilton to a Bill of Rights lay in the fact that many of the leaders thought a bill of rights was unnecessary. Hamilton said that a Bill of Rights was unnecessary, and he opposed defining rights which no one questioned.

On the other hand, Jefferson said that he would not trust any government without it. (See quotation at head of this article.) Madison, in moving the adoption of the Bill of Rights, or the first ten amendments, in the Congress on June 8, 1789, said,

> "I believe the great mass of the people who opposed it disliked it because it did not contain effective provisions against the encroachment on particular rights and those safeguards which they have been accustomed to having interposed between them and the magistrate who exercises executive power."

So that is the background of the Bill of Rights.

Perhaps we, as members of the legal profession, should empha-

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SOME DISCOVERIES ABOUT DISCOVERY—A JUDGE'S-EYE VIEW*

By Judge William C. Mathes
United States District Judge, Southern District of California

William C. Mathes

UPON adoption of the Federal Rules of Civil Procedure in 1938, the Journal of the American Bar Association proudly editorialized: "The rules were drafted with the assistance of an Advisory Committee and with the enthusiastic cooperation of the Bench and Bar. No such instance of the cooperation of a whole profession in an undertaking of this kind is afforded by the history of this or any other country. And the reason for that whole-hearted and enthusiastic cooperation is largely found in the bold fashion in which the Supreme Court met the situation.

It . . . grappled decisively with the whole problem . . . to unite the rules for cases in equity with those in actions at law, so as to secure one form of civil action and procedure for both. . . . This bold decision stirred the imaginations of men, and made all feel that they were taking a part in a magnificent enterprise for procedural reform." [24 A. B. A. J. 97 (Feb. 1938).]

The American Bar Association might well be proud. The organized bar had been a powerful force, not only in bringing the new federal rules into being but also in bringing to a turning point almost a century of widespread legislative regulation of judicial procedure. Inspired by reasons of policy and history, repeatedly advanced by Dean Pound and other leaders of our profession urging return of control of court procedure to the judicial department [Pound, *The Rule-Making Power of the Courts*, 12 A. B. A. J. 599 (Sept. 1928); Pound, *supra*, 13 A. B. A. J. 84 (Feb. 1927)], there had sprung up in many of the states strong movements for legislation expressly conferring broad rule-making powers upon state courts.

In 1937 alone, Indiana, Pennsylvania and South Dakota had enacted rule-making statutes, and in 1939 Arizona, Nebraska and Texas followed suit. Active movements looking toward adoption of rule-making statutes were reported in New York and Califor-

*Address delivered by Judge Mathes at the dedication of the new Law School building, at U.C.L.A., on Nov. 10, 1951.

nia. The bench and bar generally seemed to anticipate as a matter of course that demands which brought the new rules of procedure into the federal courts would soon find further fulfillment in the state courts. It was indeed "a magnificent enterprise for procedural reform." [See Seventh Report of the Judicial Council of California, 32 (1938).]

Some two years later the American Bar Association Journal editorialized further about the federal rules; this time to say: "The Federal Rules of Civil Procedure have entered upon the second half of the second year of their existence. During that time they have been subjected to the ordeal by fire—practical application by the courts. Remarkably few ambiguities or deficiencies have developed.

"In some states members of the bar have been waiting for this testing time to pass before actively considering the revision of their state practice along the lines laid down by the federal rules. They now have the advantage of an actual working model. Not only is such a model furnished by the federal rules themselves, but by the revised procedure of those states which have already altered their practice in substantial conformity with these rules.

"The action of the Arizona Supreme Court, . . . has shown the way.

"Similar action has been taken in Nebraska and South Dakota. Rules have been tentatively formulated in Indiana and Colorado, but not yet promulgated by the supreme courts of those states. In Maryland, Rhode Island and Texas measurable progress has been made in the same direction.

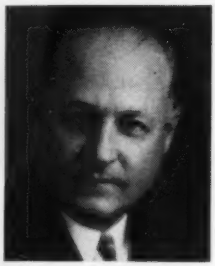
"The Section of Judicial Administration is now engaged in making a factual survey of the procedure in the various states.

"The activity in connection with the federal and these state rules has centered the minds of a great number of lawyers upon procedural questions. A vast amount of data has accumulated. The consequence is that the states which are interested in revising their procedure now have a unique opportunity—the opportunity of access to all this material and of consultation with the leaders who have become veterans in procedural reform.

"This opportunity will not continue to exist indefinitely. Much of the material is in the form of deciduous leaves and the men who produced it are not immortal. Time is of the essence." [26 A. B. A. J. 417 (May 1940).] *(Continued on page 179)*

REPORT OF ACTIVITIES OF LAWYER REFERENCE SERVICE LOS ANGELES BAR ASSOCIATION

By J. Louis Elkins,
Executive Secretary, Los Angeles Bar Association



J. Louis Elkins

FIFTEEN years ago the Los Angeles Bar Association established the Lawyer Reference Service to refer persons who do not know a lawyer to a member of the profession. Since that time the Service has been established in many of the larger cities in the United States and many of the Services established have been patterned after the Los Angeles Bar Association Service. Statistics gathered on a nation-wide basis show that 80% of the persons using the Service never before consulted a lawyer. This shows very clearly that the Service is doing just exactly what it was set up to do—refer persons *who do not know a lawyer.* Any increased business for the Bar is a by-product of the Service.

Four hundred and thirty-seven members of the Bar were registered in the Los Angeles Bar Association Service as of November 1, 1951. While the Service is maintained in the office of the Association, any lawyer in Los Angeles County in active practice and in good standing may register. The annual registration fee to all registrants, both members and non-members of the Association, is $5. All fees received are placed in a separate account and are used only for purposes of operating, maintaining and publicizing the Service.

The Service is maintained by the Los Angeles Bar Association at a cost of about $3,000 a year, which is a net cost after applying registration fees received. At the present time approximately 1,800 references are being made each year. Below will be found a tabulation of references made during the month of October, 1951, and also a tabulation showing the source of references for the same month.

LOS ANGELES BAR ASSOCIATION LAWYER REFERENCE SERVICE SUMMARY OF REFERENCES MADE DURING THE MONTH OF OCTOBER, 1951

	Laymen to Attorneys	Attorneys to Attorneys	Total
Adoptions	3	—	3
Aliens	3	1	4
Appellate	1	—	1
Condemnation Proceedings	1	—	1
Copyright and Trademark	1	—	1
Corporation	7	—	7
Criminal Law	4	—	4
Domestic Relations	44	—	44
General Practice	31	—	31
Labor Relations	1	—	1
Landlord-Tenant	3	—	3
Mechanics' Liens	1	—	1
Mining	1	—	1
Municipal Law	1	—	1
Oil and Gas	2	—	2
Patents	2	—	2
Personal Injury	4	—	4
Probate	9	—	9
Real Property	20	—	20
Veterans' Matters	1	—	1
Workmen's Compensation	7	—	7
Total	147	1	148
Attorney who reads and speaks French	1	—	1
Attorney who reads and speaks Italian	1	—	1
Attorney familiar with Illinois Law	1	—	1
Attorney familiar with Iowa Law	1	—	1
Attorney familiar with Massachusetts Law	—	1	1
Attorney familiar with Montana Law	1	—	1
Attorney familiar with New York Law	1	—	1
Total	6	1	7
GRAND TOTAL	153	2	155

SOURCES OF REFERENCES DURING MONTH OF OCTOBER, 1951

Classified Directory	22
Service recommended by friends	13
Newspaper advertising	10

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JUDICIAL ROBES

By Judge Stanley Mosk*

Judge Stanley Mosk

TO BE or not to be clad in a robe is a question that concerns many of the judges of our trial courts. Lawyers and litigants may go from court to court in the Civic Center and find complete diversity of practice among trial judges in the wearing of judicial raiment.

The Superior Court, at a meeting held March 30, 1949, declared it to be the policy of the judges that "judicial style" robes should be worn by judges while sitting as such in open court. Rule 28 of the Los Angeles Municipal Court makes the same provision, but adds that the policy "shall not operate to require any judge to wear a judicial robe if he does not desire to do so." The Long Beach Municipal Court has the latter provision in its rules.

It is estimated that, despite the declarations of policy, only about fifty percent of the judges in trial courts wear robes. Of those, some draw a distinction between jury and non-jury cases, preferring the more formal attire only for jury trials.

The uncertainty among the judiciary is undoubtedly a reflection of the controversy over the utility of judges' robes that has raged for some years on an academic level. The conflict was stimulated by an article by Judge Jerome Frank published under the title *The Cult of the Robe* in 28 Saturday Review of Literature 41 (1945). This article was extended and reprinted in Judge Frank's splendid book, *Courts on Trial* (1949). A polite, but determined, rebuttal was expressed by Dean Walter B. Kennedy of the Fordham School of Law, in 14 Fordham Law Review 192.

Judge Frank has been most critical of the use of the judicial robe, terming it "an antique garment, awkward, impractical, and to the dispassionate eye, of no aesthetic value." It is true that the robe is of antique character, although its genealogy never has been accurately traced by legal historians. One theory is that the robe originated in the dress of ecclesiastics. The principal proponents of this belief base their theory primarily on the coif, a cap of

*Judge of the Superior Court, Los Angeles County.

white linen that was tied under the chin and was said to have been used by ecclesiastics to hide the tonsure when in court.

However, a majority of legal historians believe the robe developed from ordinary civilian dress of the early 14th century, and they maintain that the coif was merely a headdress in common use a century earlier.

The conflict in theories regarding origin is aptly illustrated by an article in 61 Law Quarterly Review 30 in which it is maintained that King's Bench judicial robes "bespeak their ecclesiastical origin," but that by contrast the gown in the Court of Appeal is "of a civilian origin." Another discussion in 64 Law Quarterly Review 205 insists that "our long robes are survivals from the times when similar garments were worn by English gentlemen and are not of ecclesiastical origin."

It is interesting to note that in the 14th and 15th centuries judicial robes were varied in color from scarlet to green and violet, and winter gowns were furred. Chaucer, in his *Canterbury Tales,* spoke of short robes in red and blue, lined with white fur.

By 1700, different color robes were worn on specific occasions: purple robes at a judge's inauguration, black cloth or silk robes on ordinary occasions, and scarlet at state ceremonies.

In a solemn decree of July 4, 1635, it was ordered that "for the splendour of the Court," the High Court of England shall wear, and from that day to this it has worn, the same dress, even to the cap that is carried in the hand as a part of the full dress, worn only when a judge is passing sentence of death.

Since 1750, judges in the Old Bailey Courts in England also carry a nosegay of flowers with them to their places on the bench. As stated by Bernard O'Donnell in his current (1951) book entitled *The Old Bailey and Its Trials,* "this is a survival of the custom introduced after the outbreak of gaol fever in 1750. The stench from the felons' cells was so fearsome, and the risk of contamination so great, that a bunch of sweet-smelling herbs was always carried by the judges and all in attendance upon them on the bench, while other herbs were strewn about the dock, together with strong vinegars as a sort of disinfectant."

What about wigs in English courts? As stated by F. D. MacKinnon in 16 Law Quarterly Review 82, "wigs are not really part of the legal uniform as robes are. Wigs are simply a fashion

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IMPLICATIONS IN THE CURRENT FEDERAL TAX COLLECTOR "DEFICIENCIES"

By Lehman C. Aarons*

Lehman C. Aarons

DECAPITATED bodies can scarcely be expected to mete out justice, nor can bodies whose heads are momentarily attached but who are waiting their turns at the guillotine.

The body of Internal Revenue personnel in Washington and in the field, and the body of the Justice Department Tax Division are in this hardly comfortable position. They are either headless, or are standing in the shadow of the guillotine. Or perhaps a new head has been sewn on to the body and efforts are being made to restore circulation and some semblance of at least muscular coordination.

The intuitive reaction of the body in threat of such extreme situations is one of self-preservation. Only a supremely courageous individual in the employ of these agencies can now call the shots as he sees them. Most individuals who make up the body of these tax enforcement agencies will now tend to call the shots in the manner which will afford the greatest security against possible criticism should the case at hand ever be spotlighted in an investigation. We cannot expect the average tax enforcement officer to be a superman; we have to reconcile ourselves to the thought that justice on the merits of our cases will intuitively be subordinated to self-preservation.

It will be years before public confidence is restored in these agencies which are so vital to our very existence; it will be years before they regain their self-confidence and before we as practitioners can again feel that in the average administrative proceeding a factor more powerful than the merits of our case is not the decisive factor. Similarly it will be a long time before manpower in these agencies will be devoted in proper proportion to their

*Member of the Bar of Los Angeles County, and associated with the law firm of Pacht, Tannebaum & Ross since December, 1950. Mr. Aarons was graduated from the Law School of the University of Wisconsin in 1933, and for nine years thereafter served in the General Counsel's Office of the United States Treasury Department, becoming Assistant General Counsel in 1945. He subsequently was a member of the Chief Counsel's Office of the Bureau of Internal Revenue for two and one-half years.

legitimate ends rather than in great disproportion to the job of internal policing and other non-productive ends.

I put to one side the well publicized causes of this sad state of affairs. The malefactions of the array of non-career appointees and of a comparative handful of career appointees in certain sore-spot areas are inexcusable and subject to the severest condemnation. Not to mention their callous violation of our laws, they must surely be most destructive to our claim of world moral leadership. Let us consider some of the less publicized causes.

It is fair to surmise that pressures from Capitol Hill have been responsible for an indeterminably large number of "special treatments" in tax cases. Contributing constituents expect and receive advocacy. Although statistics are not available, no one with Washington experience will deny that letters and calls from members of Congress on individual cases take up an astonishing amount of time of headquarters personnel in all government agencies. They receive top priority and 24 to 48 hours service regardless of the relative importance of the case.

The importance of maintaining good relations with Capitol Hill creates a great dilemma for a conscientious executive. If he delays impending action, or grants a new hearing with a top man in the Department, or personally considers the case out of its usual order, he is lending himself to inequalities and discriminations in the administration of the law and subjecting himself to headline "exposure." If he fails to do these things—if he is brazen enough to treat "congressional" cases in regular course, he invites appropriation difficulties for his Department and the guillotine for himself.

The only answer to this important feature of the current demoralization is congressional self-restraint—something of which one hears but little these days. Advocacy in individual cases is no part of the fabric of our legislative branch. Its abolition, I am sure, would be viewed as a naive, if not a heretical, suggestion. But as long as it persists, favoritism will persist for those who have invested in a successful campaign. Our system is such, and human nature is such, that an executive cannot resist such pressures.

Another of the less publicized elements in this picture is the countenancing by the Department of Justice of outside private

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Brothers-In-Law

By George Harnagel, Jr., Associate Editor

George Harnagel, Jr.

THE Royal **Canadian** Mounted Police have issued a statement of policy regarding the divulging of information about motor vehicle accidents which it investigates. Members of the force may, upon request, supply the names and addresses of witnesses to the parties concerned, to their counsel, or to insurance adjusters. In addition, a member of the force may disclose to counsel such facts, but only such facts, as may be within his personal knowledge. When information is supplied to one party to an action it is to be made available to the opposing party.

* * *

In **Missouri** the unlawful practice of law is policed by an Advisory Committee of the Missouri Bar Administration. The Committee is an agency of the Supreme Court of the state, by which it is appointed and to which it is responsible. It is vested with the duty and authority to make investigations and to institute proceedings in the Supreme Court for the suppression of unlawful practice by non-lawyers and also for the disciplining of lawyers. It functions independently of the integrated Missouri Bar.

* * *

From the By-Laws of the Association of the Bar of the City of **New York:**

> "The President of the United States . . . shall have free use of the library and reading room of the Association."

Well, the job does have some compensations, or does it? The following are extracts from the Association's "Library and House Rules":

> "V. Conversation in the library is prohibited.
>
> "XVIII. Smoking is not permitted in the library or in the stack rooms.
>
> "XXI. No member shall use the address of the House of the Association as his office address . . ."

From the By-laws of the State Bar of **South Dakota**:

"Section 26. No resolution or motion, complimentary to any officer or member for any service performed, paper read, or address delivered, shall be considered by The State Bar."

What about *uncomplimentary* motions?

* * *

At the annual meeting of the **Brooklyn** Bar Association a reception was tendered members of the Association who had been admitted to practice over fifty years.

* * *

The Boston Herald has expressed its appreciation of a much needed reform in the administration of justice effected by the **Massachusetts** Bar Association in the following editorial:

"THE BAR AND DUTY

"There are 150 lawyers in the state, of such eminence as to command substantial fees, who are ready to put aside more remunerative business to serve as counsel for poor defendants accused of murder. In such a tangible way the bar recognizes its special social responsibilities.

"Under the law a Superior Court justice can assign counsel to a defendant in a capital case and the state will pay the fee up to $1000. The system has inspired a racket in which less ethical attorneys sometimes obtain assignment and then neglect the job so grossly that the unfortunate defendant never gets the fair chance our laws are supposed to guarantee.

"The Massachusetts Bar Association, stirred by several conspicuous failures to protect the rights of defendants, appointed a committee which canvassed the state's leading attorneys to set up a panel of 150 lawyers, each with at least 15 years' experience and a clearly established trial ability, who would be willing to serve as counsel at a substantial sacrifice of income. Very few of those invited declined to serve.

"From this panel, the court can assign a counsel for an indigent defendant quite as able as any counsel that a rich defendant could command. The system will bring us . . . near the ideal of equal justice for the rich and the poor. . . ."

* * *

The **Minnesota** State Bar Association still leads the way in the realm of public relations. Its latest pamphlet, "Are You Overpaying Your Taxes," has received an overwhelming reception from the public.

THE BILL OF RIGHTS IN TIME OF CRISIS

(Continued from page 162)

size another great promise it contains, which also stems from the Great Charter,—the promise of equal justice. That promise, as expressed in the doctrine of "justice through law," has dominated English law for a long while. It entered into our American law and it is a part of our constitutional heritage, part of the doctrine, basic in Anglo-American theory of law and government, that the coercive power of the State should be strictly delimited in order to insure freedom.

This is achieved either negatively by establishing certain realms into which sovereign power cannot enter, or positively, by asserting the existence in the individual of certain rights which cannot be denied to him by the sovereign, be he a king or a constitutional majority.

This doctrine is the very antithesis of totalitarianism. That philosophy of government, as expressed in its Fascist, Falangist, Nazi and Communist forms, postulates the theory of the omnipotent state—the state of unlimited power—which is alien not only to our theories of government and constitutional guaranties, but also to our life in action and our history, as well.

While the Bill of Rights has this general meaning, in the United States it also has a peculiar meaning that expresses itself in the doctrine that it is not only the duty of the courts to insure to each individual those rights guaranteed by the Bill of Rights, but that judicial power reaches the exercise of legislative power itself—the sovereign as he expresses himself in the legislative branch can have his hand stayed, if an enactment is contrary to the Constitution. That is the peculiarly American doctrine of "judicial supremacy," giving to the courts the power to declare unconstitutional a law, no matter how solemnly enacted by a legislative body, which contravenes the wording of the Constitution.

In times of crisis, many persons in authority resent the restrictions which this principle places upon governmental powers. But, as the Supreme Court reminded us after the Civil War:

> "The Constitution of the United States is a law for rules and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be

> suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority." (*Ex parte* Milligan, 1867, 2 Wall. (71 U. S. 2, 120-121.)

The quotation is from the famous case in which the Court held that a suspension of habeas corpus by the military (and their attempt to try civilians in military courts), during the War Between the States was an unwarranted exercise of executive and military power. Even though the war was over when the decision was announced, it was very important to have this reasserted at the time. It was the era of "Carpetbaggers," which was fraught with so many tragic consequences for the South.

These principles have stood unimpeached. And in times of crisis, they stand as a warning against those who would disregard the basic guarantees under one pretense or another.

In every subsequent war the Government has sought to have the doctrine repudiated by the Supreme Court. Most writers on military law have condemned it. I think it would be a tragic day, indeed, if we abandoned this principle and conceded that constitutional protection can be suspended by a military commander, in case other than those in which the Constitution itself may authorize it.

II.
THE COURTS AND INDIVIDUAL RIGHTS IN TIMES OF CRISIS

We, as judges of federal courts, find ourselves once more, in a period of crisis. I trust and pray the present crisis will not result in another general war. But if it does, I think we will need the prayers and the assistance of an alert Bar and intelligent citizenry, because among the most unpopular persons in time of war is the judge of a federal court. For it is up to him to enforce the restrictions which the Congress constitutionally makes, and it is up to him to stay the extremist who would substitute the desire of the moment for due process.

One of the greatest characteristics of western civilization has been the substitution of justice by law for justice by grace. Justice by grace, justice of the authoritarian state, or justice "West

of the Pecos" may achieve certain dramatic results, but is not suited for a civilized society governed by the principles of justice through law.

You may rest assured that we shall do our duty in the future as we have in the past. It is not generally known that there were more espionage cases tried in our District than in any other district in the United States. I, myself, tried three peacetime espionage cases, imposing the longest sentence ever imposed for peacetime espionage,—fifteen years. In 1941, a case under the Smith Act came before me. Only three cases have arisen under that Act, the Dunn case in Minneapolis, the Larrimore case in San Diego, which I tried, and what is known as the Dennis case,—the case of the eleven communists tried in New York.

In the Larrimore case I held that, because it was shown in the record that this man actually advocated the uprising of all the colored people and joining with Japan, and made such statements to men in uniform, that the test of "clear and present danger" was satisfied. The instructions I gave were not objected to and the conviction was never appealed.

Our late colleague, Judge Ralph E. Jenney, tried the famous Gorin case, one of the few peacetime espionage cases to go to the Supreme Court of the United States (Gorin v. United States, 1941, 312 U. S. 19). All of these involved conspiracies to violate the espionage laws.

One of my cases involved conspiracy with the Germans, and the other conspiracy with the Japanese. The Gorin case was a conspiracy with a Russian. The pattern is the same in all.

We live in a sensitive area. And as an aftermath of the war itself, we tried cases involving all kinds of federal war crimes from treason down and determined questions arising from the imposition of controls ranging from the rights of internees to the most insignificant violations of rationing rules. All these matters bear close relation to the rights of the individual.

One case before me, *Ex parte Kawato,* 1942, 317 U. S. 69, brought an important decision to the effect that even interned alien enemies must be given access to our courts to redress civil claims.

And yet there are those who clamor that due process be denied to those who are suspected of adherence to alien ideas. I can

think of no doctrine more subversive of that orderly judicial procedure, which is our proud heritage.

In the days to come, we will need your support and especially your good will and your prayers so that we will have the strength to live up to the duty which is imposed upon us by the Constitution against what a vocal mob or even a temporary majority may desire. As I had occasion to say some years ago, paraphrasing a sentence of Mr. Justices Holmes',

> "Mob law does not become due process by parading under the cloak of defender of the faith." (Hardyman v. Collins, 1948, 80 F. Supp. 501, 513.)

The test of our rule of law is the measure in which we respect and apply it to the persons who come in conflict with the law.

Many years ago, when prohibition was the law, a clergyman appeared before the Council of the City of Los Angeles in opposition to an ordinance that would have prohibited officers from searching without a warrant. It was soon after the Supreme Court of California had decided the case of People v. Mayen, 1922, 188 Cal. 237, in which they had declined to follow the federal rule which invalidates a conviction if evidence is introduced which was secured illegally,—without a search warrant. The minister said, "California does not observe the Constitution of the United States."

In a sense he was right at that time. The Bill of Rights is binding on the federal government only. However, the United States Supreme Court has since held that many of the guaranties of the federal Bill of Rights apply to the states. Gradually, the Supreme Court is reading many of the guaranties of the first ten amendments into the guaranty of due process.

So we find that they have held that the guaranty of free speech and all the guaranties of the First Amendment are binding on the states. And I would not be surprised one day to see them hold that the guaranty against search and seizure is implicit in due process in criminal prosecution, so as to be binding upon the States.

To conclude: We must not merely pay lip service to the Bill of Rights. We cannot say, as the minister referred to said, "After all, the people that benefit by it are bootleggers." The test of due process lies in strict observance of the rule of law,

just as the test of Christianity lies in strict observance of Christ's injunction,

> "Inasmuch as you have done it unto the least of these, my brethren, you have done it unto me."

The test of the rule of law is the manner in which we, as judges, see that it is applied to those who come in conflict with the law.

If we live up to this spirit,—then our profession of faith in Americanism will not be merely an empty gesture, repeated on national holidays or to satisfy those who think that is enough to profess belief,—but a living, working philosophy. For the test of our loyalty to American principles must be the way in which in our daily lives we personify them. In this way, we pay real homage to those who gave us the Bill of Rights and lay foundation for its further unfoldment and adaptation to a richer, better America.

Lincoln preceded the remarks to which I referred in the beginning with the question,

> "Is there, in all republics, this inherent and fatal weakness?"

The answer is No. The Bill of Rights does not stand in the way of protection against real danger. *But we should not undermine its broad guarantees by resorting to totalitarian methods, impelled by illusory fears. Surrender of liberty is not a necessary price to pay for our attempt to preserve it.*

SOME DISCOVERIES ABOUT DISCOVERY—A JUDGE'S-EYE VIEW.

(Continued from page 164)

During those days a decade ago Chief Judge John J. Parker of the Court of Appeals for the Fourth Circuit, as Chairman of the American Bar Association Committee on Improving the Administration of Justice, was a leading spokesman in urging state adoption. Early in 1941 Judge Parker wrote: "There is one practical suggestion that I wish to make with respect to trial practice; and that is the desirability of having the federal rules adopted by the states. These rules were not formulated by federal judges for the peculiar practice of the federal courts. They were formulated by outstanding members of the American Bar as an ideal code of procedure. They represent the best thought of the country on that subject; and they are infinitely superior to the practice of any state, for they represent what is best in the practice of all the states. They are so simple that any lawyer can get a good working knowledge of them in a few hours' study . . . They have already been adopted as the code of practice in a considerable number of states, and the lawyers of such states have a great advantage over others in that they are thus required to carry in mind only one system of practice for both state and federal courts. Furthermore, they at once find themselves familiar with the practice prevailing in an increasingly large number of the other states of the Union." [Parker, *Improving the Administration of Justice,* 27 A. B. A. J. 74 (Feb. 1941).]

But these urgings were not enough. The "magnificent enterprise for procedural reform" was bogging down in many of the states. And in California it had seemingly died aborning.

There is historical basis for California's apparent reluctance to leave the Code of Civil Procedure behind. David Dudley Field, who led the mid-nineteenth century movement for codification, had a younger brother, Stephen, who came to California in 1849 and as a member of this state's first legislature drafted and secured enactment of the Civil and Criminal Practice Acts. By 1872 Stephen had become Mr. Justice Field and was still serving the cause of codification as a member of the commission which drafted California's Code of Civil Procedure along with her Civil and Penal and Political Codes.

Upon adoption of these codes, David Dudley Field is reported to have sent this congratulatory message: "All honor to you for your great work accomplished! It will be the boast of California that, first of English-speaking states, she set the example of written laws as the necessary complement of a written Constitution for a free people." [22 A. B. A. J. 775 (Nov. 1936).] California thus became a leading exponent of the notion that everything can be covered by statute.

The great contribution of the Field code was provision for "one form of civil action" [Cal. Code Civ. P. §307]. This contribution has been carried into the federal rules [Fed. R. Civ. P. 21]. The great vice of Field's work was to start the fashion of looking to the legislative branch of government for every detail of procedure.

Today that fashion is definitely outmoded. It seems now to be generally conceded that the judicial branch should have the power to make rules to govern court procedure, just as the legislature has the power to make rules to govern legislative procedure. And for the same reasons.

Remembering that California has one of the most highly organized and active bars in the nation, we may well wonder why the legal profession in this state has permitted civil procedure in the trial courts to remain virtually at the 1872 status. True, training and history have given California lawyers some sentimental attachment to the codes. And De Tocqueville's observation of more than a century ago that "American lawyers are disinclined to innovate when they are left to their own choice" [1 De Tocqueville, *Democracy in America*, 357 (6th ed., 1876)] may have some application to the profession in California.

But California lawyers have long known there is no choice but some day to modernize the antiquated civil procedure. They know that all worthwhile considerations of reason and policy argue for a change. They know in a word that the trial courts cannot properly administer justice without rules of procedure in keeping with present-day needs.

Why then after more than a decade hasn't the bar of California moved to adopt the federal rules of procedure? One answer to this inquiry is, I think, subject to discovery with a reasonable degree of certainty.

Speaking generally of course, California lawyers have come to accept, perhaps with some misgivings, the simplified pleading provided in the rules, but they largely manifest the attitude of disbeliever toward pre-trial procedures intended to discover the facts, simplify the issues and shorten the litigation. Federal judges witness this attitude week after week, even after thirteen years of experience under the rules. Attorneys for plaintiff often appear alarmed by the pace at which the prosecution of the case may proceed; and the defense seem to view the lack of means for delay with even greater surprise.

But the provisions for discovery are apparently most shocking of all. Since 1872—and before—the practitioner in the state courts has been accustomed to hold his case "up his sleeve" so to speak, except as he might be required to come forward and deny the genuineness or due execution of a written instrument made part of a pleading [Cal. Code Civ. P. §§447, 448], or to deliver a copy of an alleged account to an adverse party [Cal. Code Civ. P. §454], or to submit his client to a deposition prior to trial. [Cal. Code Cov. P. §§2021, 2022.]

Thus the element of surprise has remained a feature—a somewhat dramatic feature—of litigation in the courts of California; and the bar is seemingly reluctant to part with it. Lawyers appear generally to believe that strategy having surprise as its chief ingredient often brings a successful result in litigation. Tall tales of important cases won by a single clever strategem are part of the folklore of the profession which takes root during law-school days.

Trial lawyers have discovered that the rules as to discovery, when employed with persistence and imagination, operate to remove the romantic element of surprise almost entirely from litigation in the federal courts. The taking of a deposition—the ultimate in discovery under California's Code of Civil Procedure—is found to be merely a preliminary, a starting point, to learn facts to serve as a basis for interrogatories under Rule 33; or to learn of documents later to be demanded and inspected pursuant to Rule 34; or to learn facts upon which to ground requests for admissions in accordance with Rule 36.

Of all the means of discovery provided by the rules, that of requests for admissions under Rule 36 is by far the most potent. Rule 36 provides in part that: "(a) REQUEST FOR ADMISSION.

After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within 10 days after commencement of the action leave of court, granted with or without notice, must be obtained. Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hear-

ing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder . . .

"(b) EFFECT OF ADMISSION. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding."

It requires little reflection to envision that carefully drafted requests for admission of every material fact as contended for by the party making the requests should leave little for his adversary to hold in suspence until trial. And Rule 37(c) gives realistic aid toward accomplishment of that result by providing that: "If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made."

Under the federal rules, then, a party may not only take the deposition of his adversary, but may also discover and inspect his documentary evidence, bombard him with interrogatories, and finally serve him with a peremptory demand that he admit every material fact not theretofore admitted, under the penalty of paying attorney fees and expenses of making the proof, if he enters an improvident or otherwise unwarrantable denial.

But that is not all. After the parties have completed their discovery procedures the pre-trial conference follows, whereat the judge attempts to discover whatever remains undiscovered on either side.

Discovery procedures force the advocate to come face to face with his case and to appraise it along with that of his adversary.

(Continued on page 185)

"What Real Estate did Mr. Smith own at the time of his death?"

The executrix is assisting you with an estate inventory of the deceased. There are policies, deeds and contracts... some dating back many years. The important questions are... What real estate was actually owned at the time of death? Where is a reliable source of such information?

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Pre-trial procedures bring opposing counsel together, affording them the opportunity prior to trial to examine all the documentary evidence in the case and to define specifically the issues of fact remaining to be litigated between them.

Thus the dules as to discovery repudiate the so-called "sporting theory of justice," and affirm the concept that procedures in litigation are tools to be employed in search of the truth, "irrespective of who may be temporarily in possession of the pertinent facts." [Holtzoff, New Federal Procedure and the Courts 7 (1940).]

The result often is what I like to call justice of the highest quality—that achieved by consensual agreement of the parties to compromise the controversy. Settlements make way on the calendar for cases which must be adjudicated. And so it is today there is hardly a federal court where a litigant cannot prosecute his case from filing to judgment within less than one year.

All this has come and the surface of discovery under the rules has been little more than scratched. To be sure those who practice in patent litigation and other causes largely within federal jurisdiction have come to employ many of the means of discovery. But those who are most accustomed to state court practice seem to prefer the pop gun of a deposition to the cannon of requests for admissions. I say this not to criticise, but in an effort to describe. The thought can be emphasized by disclosing to you that not in the past six years have I heard an application for imposition of the penalties of attorney's fees and expenses under rule 37(c).

During the past year the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts under the direction of Mr. Will Shafroth, an alumnus of the University of California, has made a study of the use of discovery procedures in the United States District courts sitting in New York City, Chicago, Philadelphia, Baltimore, and Alexandria, Virginia.

This study discloses that there was "some use of discovery . . . in over 25 per cent of the cases . . ." studied; that "of the five discovery devices the deposition was most popular . . ."; and that "Requests for admissions are used . . . in about 3 per cent of the cases filed, and are found chiefly in government rent

(Continued on page 187)

ANNOUNCEMENT OF AN INSTITUTE ON LEGAL-MEDICAL PROBLEMS

Sponsored by the University of Southern California Schools of Law and Medicine

AN INSTITUTE on legal-medical problems for doctors and attorneys will be co-sponsored by the Schools of Law and Medicine of the University of Southern California next year, it was announced today. It will be held in the late spring or early summer.

The week-long institute will present outstanding lectures in the fields of law and medicine on problems of importance to both professions. Topics which may be discussed are malpractice suits, medical and legal terminology, cause of death as evidence, scientific crime detection, and what the expert medical witness expects from the trial attorney and vice versa.

A preliminary planning committee is developing a problem for the institute under the direction of Dr. Louis J. Regan, legal counsel for the Los Angeles County Medical Association; Dr. Andrew A. Sandor of Alhambra, who has participated in similar institutes in the past; Richard L. Kirtland, member of the Los

Angeles law firm of Reed & Kirtland; Dean Shelden D. Elliott of the SC School of Law, and Professors Richard Wicks and Harold Horowitz, of his faculty.

Dr. Burrell O. Raulston, dean of the SC School of Medicine, named Dr. Edward M. Butt, professor of pathology and chief pathologist at the Los Angeles County Hospital, to assist the committee.

The legal-medical institute will become part of the SC law school's graduate and professional program which includes the annual Institute on Federal Taxation, the Traffic Court Judges and Prosecutors Conference, and post-graduate courses for practicing attorneys.

SOME DISCOVERIES ABOUT DISCOVERY—A JUDGE'S-EYE VIEW.

(Continued from page 185)

suits." [Annual Report of the Director of the Administrative Office of the United States Courts, 3940 (Sept. 1951).]

There seems no effective answer to the argument that any state would do well to adopt the federal rules as to discovery. The very minimum would seem to be some provision for discovery of documentary evidence in advance of trial.

A distinguished jurist has advocated a rule along the following lines: "The party who has a document to produce, produces it in the first instance to the adverse party, who either admits the authenticity of it, or declares his intention to contest it. If he admits it, he marks it as admitted. If he chooses to contest it, he has a right to do so, but he uses it at his peril—at the peril of simple costs in case of simple temerity, at the peril of extra costs in case of *mala fides*. The end in view is, in every instance, to save the suitors from the delay, vexation, and expense, of adverse authentication, insofar as these several inconveniences are avoidable. The means to be employed in the prosecution of that end, is the taking such arrangements as shall make it the indisputable interest of every individual concerned . . . to abstain from giving birth to these several inconveniences, any further than as they are necessary." [VII Bentham, *Rationale of Judicial Evidence,* 185 (Bowring's ed. 1843).]

Those are not the words of today's advocate of procedural reform, but the words of Jeremy Bentham, who advocated pretrial discovery of documentary evidence during the years when

Kent's Commentaries and Story's great works were being published, during the years when Marshall was Chief Justice and California was still a civil law jurisdiction—the land of the Dons.

Bentham knew more than a century ago as well as we know today that the trial court—the tribunal charged with first responsibility in the administration of justice—cannot hope to function as it should so long as trial judges and trial lawyers must conduct litigation with all the hampering limitations of legislative-made procedure.

As Dean Pound put it in 1940 upon responding to the award of the American Bar Association's Medal for Conspicuous Service in the cause of American Jurisprudence: "The greatest single achievement for enabling our courts to do effectively their job of administering justice has been inducing the legislatures to keep their hands off and allowing the courts to prescribe the course of proceedings before them by rules of court, as they did originally at common law." [26 A. B. A. J. 801 (Oct. 1940).]

Judicial rule-making power has recently been vested in the Supreme Court of Nevada. I hope California will soon follow the example and permit her Supreme Court or Judicial Council to modernize trial court procedure. [See: Cal. Const., Art. IV, §1a(5); Third Report of the Judicial Council of California, 18, 64-66, 80-84 (1931); Ninth Report *id.* 5 (1942); Tenth Report *id.* 6-7 (1944); Thirteenth Report *id.*, Part I, 9 (1950); Cal. Code Civ. P., §961; Cal. Penal Code, §12477.]

Today Dean Pound has told us how this state university law school can well perform many of the functions of a ministry of justice.

In keeping with that suggestion, as we dedicate this new building, I would propose as a first task of first importance the modernization of civil procedure in the trial courts of California; specifically the adoption of the federal rules.

It would be another "magnificent enterprise for procedural reform" to witness this great growing law school lead California to join the company of Arizona, Colorado, Delaware, Florida, Iowa, Maryland, Minnesota, Missouri, New Jersey, New Mexico, North Dakota, Pennsylvania, South Dakota, Texas, Utah and Washington—the sixteen states which have to date followed in whole or in part the Federal Rules of Civil Procedure.

And such a movement might well give needed aid and comfort

(Continued on page 190)

WHAT DO YOU THINK OF OUR NEW BILLBOARD? We'll appreciate your comments and opinions on this new deluxe billboard, situated at our customers' parking lot, 931 South Hill Street. While it is on display, this board will remind 3,642,000 motorists and pedestrians to "See Your Attorney" and "Name Us Executor in Your Will." (We should also like to call your attention to our newspaper ads suggesting PENSION TRUSTS, which may be of interest to you and your clients.)

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to the Committee on Law Reform of the Association of the Bar of the City of New York which, with the approval of the Judicial Council of the State of New York, continues unsuccessfully to this date to sponsor legislation for adoption of the federal procedure in New York. [Seventeenth Annual Report of the Judicial Council of the State of New York, 68-69 (1951).]

The bar of California must be persuaded to see the desirability of discarding the notion that the surprise element is a determining factor in the conduct of litigation. As suggested before, this may prove to be a task of some duration. Indications are that many practitioners prefer to rest on 1872 model procedure. [Third Report of the Judicial Council of California, 81-84 (1931).] Moreover many lawyers hold the belief that surprise often brings a successful result in litigation. Judges on the other hand, who have day-after-day opportunity to view the conduct of litigation from the vantage point of disinterestedness will, I believe, almost unanimously subscribe to the view that while surprise may provide some excitement for lawyers and litigants, this time-honored device for making the trial of a lawsuit a more romantic venture rarely, if ever, changes the outcome.

Adoption of the federal rules by the state will bring a different approach to the conduct of litigation; an approach that gives up the sporting theory and with it surprise as a supposedly effective means of winning judgment; an approach that recognizes the true function of adversary proceedings as a search for the truth as to the facts; an approach that emphasizes the duty of each attorney as an officer of the court to facilitate the processes whereby the facts material to decision in the possession of each party are placed before the court.

This new law school which "seeks, as its primary purpose,

preparation for the practice of law wherever the common law prevails," will, I am confident, teach the lawyers of tomorrow such an approach to advocacy in order that our profession may better carry forward the promise of Magna Carta that "we will deny justice to none, nor delay it."

REPORT OF ACTIVITIES OF LAWYER REFERENCE SERVICE LOS ANGELES BAR ASSOCIATION.

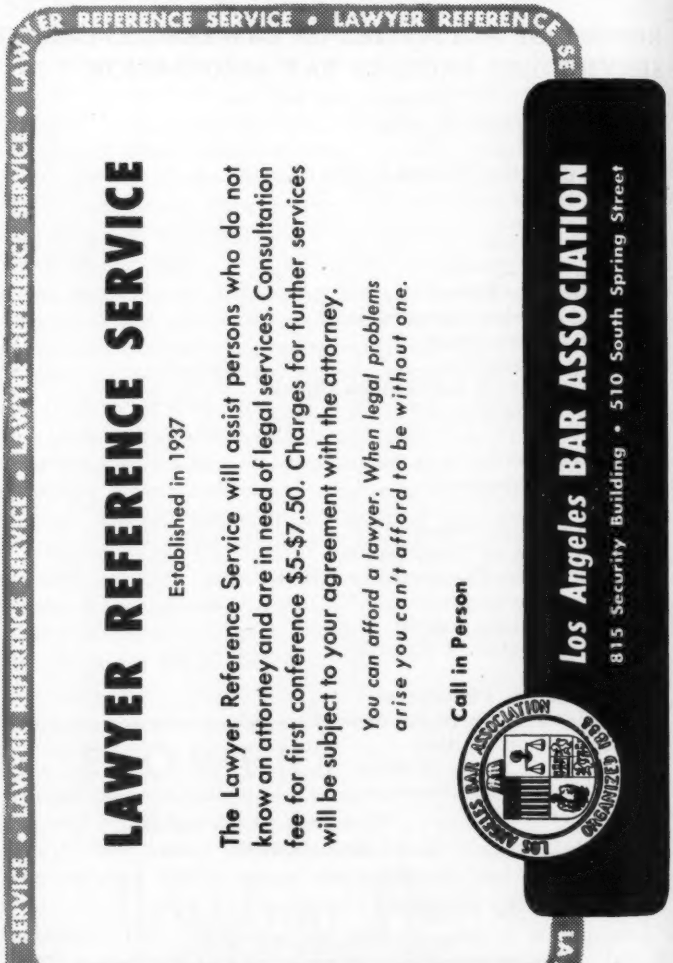
(Continued from page 166)

Association's Radio Program	10
Attorneys	7
Personal deduction (Called LABA)	6
Reader's Digest	6
District Attorney	5
Real Estate Board	5
State Bar of California	5
Better Business Bureau	4
Industrial Accident Commission	4
Had used Service before	3
Legal Aid Foundation	3
Editorial in one of metropolitan papers	2
Insurance company	2
Judge	2
Public Defender	2
Chamber of Commerce	1
City Attorney	1
County Probation Officer	1
Federal Bureau of Investigation	1
Had used similar Service in New York	1
Labor Commission	1
Los Angeles Daily Journal	1
Record Clerk, Hall of Records	1
Sheriff's office	1
State Commerce Department	1
University of Southern California Law School	1
Veterans Administration	1
Mail inquiries	32
TOTAL	155

That the Service is known throughout the United States is evidenced by the fact that thirty-two mail inquiries were received during the month of October.

During the months of May to September, 1951, inclusive, $2,000 was spent for newspaper advertising of the Service. This was done in harmony with established principles of the Committee

on Professional Ethics of the American Bar Association which has approved the propriety of publicizing the Service by means of newspaper advertising and other commonly employed media of publicity. A copy of the advertisement used and a list of the papers in which it appeared two or more times follow:



Los Angeles Examiner	**Eagle Rock News-Herald**
Los Angeles Times	**Firestone Park News**
Los Angeles Herald-Express	**Griffith Park News**
The Mirror	**Highland Park Journal**
Daily News	**Inglewood Citizen**
Hollywood Citizen-News	**Los Feliz Hills News**
Long Beach Press-Telegram	**Miracle Mile Press**
Pasadena Star-News	**Southwest Wave**
Glendale News-Press	**Beverly Hills Shopping News**
Alhambra Post-Advocate	**Beverly Hills Citizen**
Santa Monica Outlook	**Wilshire Shopping News**
Bowling News of Southern California	**Wilshire Citizen**
	Pico Post

The advertisements were run consonant of a growing recognition on the part of the Bar Association of the importance of making available competent legal advice and services to every citizen regardless of economic status.

The Service has proved to be a very fine public relations activity. It has been in the past, and we have every reason to believe it will be in the future, a good will builder for the profession.

Respectfully submitted,

J. LOUIS ELKINS,
Executive Secretary.

JUDICIAL ROBES

(Continued from page 168)

in headdress that was once usual for gentlemen, but was given up by all of them except bishops, judges and barristers toward the end of the 18th century."

Judge Frank finds that "the judges' vestments are historically connected with the desire to thwart democracy by means of the courts." He finds it significant that Jefferson opposed any distinctive raiment for Federal judges, while the more aristocratic Hamilton advocated both robes and wigs. Few State courts used robes until the last decades of the 19th century.

In his book, Judge Frank points out that no public servants wear any distinctive costume except members of the armed forces, elevator operators, and judges. Only the former two, he maintains, have any real utility.

"The time has come," he urges, "for all judges to discard their

ancient trappings. The robe as a symbol is out of date, and an anachronistic raiment of ceremonial government. An immature society may need or like to fear its rulers, but a vital and developing America can risk full equality. A judge who is a part of a legal system serving present needs should not be clothed in the quaint garment of the distant past."

On the other hand, Dean Kennedy points out that use of the robe has in no way stifled the development of American law, nor the sterling independence of our Supreme Court, legal scholars like Holmes, Learned Hand, nor of Judge Frank himself. He argues that "there is warrant for the belief that American traditions and the continuity of our institutions are inspired and perpetuated by representative symbols. Our flag, once described as a piece of woolen bunting, has assumed a new and glorious texture." Rebutting Frank's theory that judicial garb curbs the inner spirit of a great judge, Kennedy maintains that "the judicial robe does not make the judge, nor unmake him." As he points out "a judge who is kindly at heart does not become a tyrant through the wearing of his mantle of authority. An overbearing jurist does not shed a deeply imbedded arrogance from the simple expedient of removing the gown."

In concluding, Kennedy suggests that a black robe "has its advantages in symbolizing the dignity and majesty of the law and the conscience of the state speaking through its judiciary."

Kennedy pointed out that the United States Supreme Court has always worn robes, that the attire there has not stifled the independence of the members nor has it been unduly conducive to uniformity. In that connection it is interesting to note that Justice Robert Jackson, in his address before the State Bar of California at San Francisco, August 23, 1951, discussed at some length how counsel should be attired in appearing before the Supreme Court. He quoted Polonius, "the apparel oft proclaims the man," and pointed out that "the robe of the judge is taken as somewhat symbolic of his function."

The conflict between advocates and opponents of the judicial robe appears to be so deep that any reconciliation by the judiciary is unlikely. Perhaps members of the bar, standing as they do midway between the bench and the public, appropriately may express more objective conclusions.

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While the results may seem like magic... there's no hocus pocus in an INTER VIVOS TRUST. To discuss the creation of a trust call our Estate Planning Department or any of our private trust officers. MAdison 6-2411.

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IMPLICATIONS IN THE CURRENT FEDERAL TAX COLLECTOR "DEFICIENCIES."

(Continued from page 170)

practice by United States Attorneys and their staffs. If the justification for this policy is the low salaries paid in that Department, we should be ashamed to admit it. Aside from this, how is it possible for any but a superman to avoid conflicts under these circumstances? Every defendant in a criminal prosecution is a potential client. Every opposing counsel in private litigation is a potential advocate in a departmental matter. Every official contact is a potential weapon of intimidation or a potential source of benefits in private practice. Need more be said?

Some members of the U. S. Attorney's staffs have voluntarily refrained from availing themselves of this privilege. The privilege should be fully aired and examined. It surely cannot survive critical public analysis.

Another less publicized element is perhaps the hardest of all to deal with. It pertains to ourselves and our brothers in the legal fraternity. Behind every case of corruption or special influence lies a corruptor or a special influencer. Of course, not all of them are attorneys or clients acting with their attorneys' express or tacit consent; but undoubtedly many of them are. Some of the "professionals" in this field have recently been spotlighted. All should be vigorously pursued, if not by Congressional Committees, then through local disbarment and disciplinary procedures. As a profession, we can ill afford to have this calumny laid at our door and remain unanswered.

If our rules and canons need strengthening to cope with this condition, then let us strengthen them. In particular, the Ameri-

can Bar Association and state and local groups could perform a service of inestimable value by rendering it unethical to practice law and plead cases via "Capitol Hill." Lawyer-Congressmen and lawyers generally should be bound by such a rule. In any event, appropriate committees should now be active in studying the necessary measures suggested by the current exposures.

Finally, we can perform an important service by keeping our heads level and our feet on the ground. The great mass of career tax men in the government are conscientious, honest and patriotic. Nevertheless, as confidence in our system is shaken by the few who are not so, the temptation to widespread public dishonesty becomes great. Let us do all in our power to lend support and courage to that great body of sincere and honest public servants, and to instill such support in any of our clients who might be tempted to join the parade of demoralization.

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